IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 842 of 1983

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO.LTD. - Appellant(s)
Versus
PRAVINABEN PRAVINPURI GUSAI & 5 - Defendant(s)

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Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1,
MR BC DAVE for Defendant(s) : 1 - 3.
NONE FOR THE RESPONDENT NOS.4 AND 5 THOUGH SERVED.
MS TRUSHA THAKKAR FOR MR AR THACKER for Defendant(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 07/05/2007

ORAL JUDGMENT

1. The appellant – Insurance Company, being aggrieved by the judgement and award dtd.30/8/1982 passed in Motor Accident Claims Petition No.89 of 1981 by the Motor Accident Claims Tribunal (Main), Kutch at Bhuj,

awarding a sum of Rs.60,000=00 with costs and interest, is before this Court with a submission that the Award made in favour of the claimants - respondents is bad on facts and law and in any case, is excessive.

2. The facts necessary for disposal of the present matter are that on 28/8/1990, the original respondent No.1 – Kailashgar Shamgar Gusai was driving the Motor Tanker bearing No.GYT-5007, the deceased Pravinpuri Gusai was taking rest in the driver's cabin, according to the claimants, he was in the truck as second driver. Kailashgar Shamgar Gusai was driving the vehicle in very rash and negligent manner and when the tanker reached near the National Highway, the driver lost balance and control over the vehicle, the vehicle dashed against Truck bearing No.DHG-3068, resulting into injuries to the driver and leading to death of Pravinpuri Gusai.

3. The Insurance Company appeared and submitted that the claimants be put to strict proof about income and age of the deceased, the accident occasioned because of rash and negligent act of the deceased and that the presence

of second driver was not necessary, if the first driver was driving the vehicle.

4. The learned tribunal, after recording evidence and hearing the parties, came to the conclusion that the claimants have proved the income and also proved that the presence of the second driver in the vehicle at the time of accident, was not unnatural.

5. After going through the records, I am also of the opinion that the learned Tribunal was not unjustified in holding that if two drivers are employed by particular person, then, presence of both the drivers in the vehicle would not be a strange phenomenan. Ordinarily, for short distance only one driver is employed, but for covering long distance, two drivers are employed to avoid unnecessary delay in carrying the shipment to its destination. In the present case, the tribunal has given proper reasons for holding that presence of the deceased in the truck was not unnatural, on that count, I do not think that this Court should interfere in the matter.

6. So far as the question of grant of compensation is

concerned, in view of sec.96(2) of the Motor Vehicles Act, 1939, Insurance Company would not be entitled to challenge the amount of compensation unless it had taken previous permission of the tribunal to defend the matter on merits. From the judgement passed by the tribunal, it does not appear that such permission was sought for by the Insurance Company during the course of trial. It is also to be seen that defence of the Insurance Company was that the liability of the Insurance Company was under the Workmen's Compensation Act, but the facts would show that the Insurance Company had taken additional premium for covering extra risk and if that be so, the tribunal cannot be held to have committed any wrong in making the Award.

7. The appeal deserves to and accordingly dismissed. No costs.

(R.S. GARG, J.)

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